

1 HOWARD M. GARFIELD State Bar #43369
Hgarfield@longlevit.com
2 DAVID P. BOROVSKY State Bar #216588
DBorovsky@longlevit.com
3 LONG & LEVIT LLP
465 California Street, Suite 500
4 San Francisco, CA 94104
TEL: (415) 397-2222 FAX: (415) 397-6392
5

Attorneys for Defendants
6 NOVOGRADAC & COMPANY, LLP and JON
KRABBENSCHMIDT
7

8 UNITED STATES BANKRUPTCY COURT
9 NORTHERN DISTRICT OF CALIFORNIA
10 SANTA ROSA DIVISION
11

12 IN RE:

13 SOLSTICE, LLC, et al.,

14 Debtors,

[S.D.N.Y Bankr. Case No. 09-11010 (REG)]

Chapter 11 (Jointly Administered)

Adversary Proceeding No. 09-01186

15 HEARING:

16 Date: January 25, 2010

17 Time: 2:00 p.m.

Place: 99 South "E" Street, Santa Rosa, CA

Judge: Hon. Alan Jaroslovsky

18 SOLSTICE, LLC,

19 Plaintiff,

20 vs.

21 NOVOGRADAC & COMPANY LLP; JON
KRABBENSCHMIDT,

22 Defendants.
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**JOINDER IN MOTION AND MOTION
BY DEFENDANTS NOVOGRADAC &
COMPANY LLP AND JON
KRABBENSCHMIDT TO TRANSFER
VENUE OF REMOVED ACTION
PURSUANT TO 28 U.S.C. §1412;
SUPPORTING MEMORANDUM OF
POINTS AND AUTHORITIES**

1 **I. JOINDER IN AND MOTION TO TRANSFER VENUE PURSUANT TO 28 U.S.C.**
2 **§1412**

3 Defendants Novogradac & Company LLP (“Novogradac”) and Jon Krabbenschmidt
4 (“Krabbenschmidt”) hereby join in the pending motion by defendants Winston & Strawn LLP
5 (“Winston & Strawn”) and Jonathan Cohen (“Cohen”) to transfer venue to the Southern District
6 of New York, pursuant to 28 U.S.C. §1412. This motion was duly noticed and filed in related
7 adversary proceeding No. 09-1179, and is presently set for hearing on January 25, 2010, at the
8 above-captioned place and time.

9 In addition, Novogradac and Krabbenschmidt also move to transfer venue of this
10 adversary proceeding (No. 09-09-01186) to the Southern District of New York, also pursuant to
11 28 U.S.C. §1412. Subject to the Court’s approval, such motion will be brought on the same
12 date, at the same place and time.

13 This transfer is sought “in the interest of justice” on the grounds that—like the related
14 adversary proceeding—this adversary proceedings (1) arises out of the same subject matter as a
15 contested proof of claim filed (by Novogradac/Krabbenschmidt) in the bankruptcy case pending
16 in the Southern District of New York (“the Main Bankruptcy Case”) and (2) is otherwise related
17 to the Main Bankruptcy Case.

18 **II. MEMORANDUM OF POINTS AND AUTHORITIES**

19 The facts and legal authorities warranting transfer of the related adversary proceeding to
20 the Southern District of New York are set forth in the pending motion filed by Winston &
21 Strawn and Cohen (in adversary proceeding No. 09-01179). Given the similar facts and legal
22 authorities supporting this motion which seeks the same relief, they will not be reiterated herein
23 for the sake of brevity. Instead, Novogradac and Krabbenschmidt hereby incorporate by
24 reference the points and authorities supporting the pending motion, and ask that the Court
25 likewise transfer this adversary proceeding to the Southern District of New York as well.

26 To briefly summarize the basis for this motion, the following facts and circumstances
27 support transfer to the Southern District of New York:

- 28
- As in the related adversary proceeding, the removed cause of action sought to be transferred is a single cause of action (for purported accountant

malpractice) alleged by plaintiff/debtor in the state court lawsuit (Marin County Superior Court Case No. CIV 095755). Notice of Removal, ¶4, Exh. 4.

- As in the related adversary proceeding, the claim for purported accountant malpractice arises from a disputed proof of claim filed by Novogradac/Krabbenschmidt in the Main Bankruptcy Case (S.D.N.Y Bankr. Case No. 09-11010 (REG). Notice of Removal, ¶¶1-3, Exhs. 1-3.
- Likewise, because debtor/plaintiff alleges that Novogradac/Krabbenschmidt charged “excessive amounts for accounting services”, adjudication of this claim will necessarily implicate the allowance of the Bankruptcy Claim in the Main Bankruptcy Case, will thereby directly affect the administration of the Main Bankruptcy Case. Notice of Removal, ¶¶4, 9, Exh. 4 at p. 7.


For these reasons, both adversary proceedings are “core proceedings” in the Main Bankruptcy Case, or at least “related to” that case. Moreover, as in the related adversary proceeding, the Bankruptcy Court in New York already has the subject claim in front of it by virtue of Novogradac/Krabbenschmidt’s Bankruptcy Claim, and that Bankruptcy Court is virtually certain to adjudicate it. As such, the Southern District of New York is the most appropriate venue for this action, and it would be in the interests of justice and of judicial efficiency to transfer both related adversary proceedings to that single venue—the same venue selected by plaintiff/debtor in the first instance.

For the foregoing reasons, Novogradac and Krabbenschmidt respectfully request that the Court transfer both related adversary proceedings to the Southern District of New York.

Respectfully submitted,

Dated: January 19, 2010

LONG & LEVIT LLP

By 
HOWARD M. GARFIELD
DAVID P. BOROVSKY
Attorneys for Defendants
NOVOGRADAC & COMPANY, LLP
and JON KRABBENSCHMIDT

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